

## DEPARTMENT OF STATE REVENUE

03-20200194R.ODR

**Final Order Denying Refund: 03-20200194R  
Withholding Tax  
For March 2019 Tax Period**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

### HOLDING

Company is liable for collection fees as it failed to timely respond to Department's notices regarding the assessment.

### ISSUE

#### **I. Tax Administration - Collection Fees.**

**Authority:** IC § 6-8.1-5-1; [IC 6-8.1-8-2](#); IC § 6-8.1-8-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer seeks a refund of collection fees imposed due to a levy of Indiana withholding tax.

### STATEMENT OF FACTS

Taxpayer is an out-of-state company with employees in Indiana that files monthly withholding tax returns with the state. Taxpayer filed a withholding tax return for March 2019 but erroneously reported its quarterly withholding, while only remitting money withheld for the month. Because the return showed a larger tax liability than what Taxpayer remitted, the Indiana Department of Revenue ("Department") issued Taxpayer a Proposed Assessment for the outstanding tax liability. This Proposed Assessment was issued to Taxpayer via the United States Postal Service on May 13, 2019 and was not returned to the Department. Because Taxpayer did not respond within 60 days, the Department issued a Demand Notice to Taxpayer. Taxpayer did not respond to the Demand Notice, leading the Department to employ a collection agency to collect the unpaid liability on July 29, 2020.

Taxpayer submitted an amended WH-1 on August 9, 2020, which showed a tax liability that matched the amount initially remitted. Subsequently, Taxpayer filed a GA-110L Refund Request for excess taxes paid and collection fees. Taxpayer's request was granted for excess taxes paid but was denied for collection fees. Taxpayer timely protested the refund denial and a telephonic hearing was held. This Final Order Denying Refund results and any additional facts will be provided as necessary.

#### **I. Tax Administration - Collection Fees.**

### DISCUSSION

Taxpayer protests the denial of its refund claim for collection fees, stating that the tax liability which brought about the collection fees was improper and has been eliminated.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). All tax assessments are prima facie evidence that the Department's claim for unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and

penalties . . . ." IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer erred by filing an inaccurate withholding tax return for March 2019. The Department issued a Proposed Assessment for the reported withholding which was not paid. Taxpayer failed to pay or protest this assessment. The Department then issued a Demand Notice to demand payment of the tax liability prior to hiring a collection agency. Once again, Taxpayer did not pay or protest the assessment. In fact, Taxpayer only attempted to remedy its error after the outstanding liability went to warrant and the Department's third-party collection agency collected part of the liability plus collection fees.

The Department followed statutory procedure each step of the way. The liability went to warrant, the Department's third-party collection agency took action to collect part of the outstanding liability and retained a fee for its efforts. The Department already refunded Taxpayer in full all money erroneously remitted to the Department. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

#### **FINDING**

Taxpayer's protest is respectfully denied.

November 24, 2020

*Posted: 01/27/2021 by Legislative Services Agency*  
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